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8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 RODNEY SMITH LTD., a New York  
limited company a/k/a The Estate of  
12 Rodney Smith,

13 Plaintiff,

14 v.  
15

16 SUGAR FACTORY BROADWAY, LLC,  
17 a Nevada Limited Liability Company;  
SUGAR FACTORY ATLANTA, LLC, a  
18 Georgia limited liability company;  
19 BILOXI SF, LLC, a Mississippi limited  
liability company; SUGAR FACTORY  
20 BRAVERN, LLC, a Delaware limited  
liability company; TABLEZ FOOD  
21 COMPANY, LLC, a United Arab  
22 Emirates registered company; SUGAR  
23 FACTORY PFC, LLC, a Virginia limited  
liability company; ATLANTIC CITY SF,  
24 LLC, a New Jersey limited liability  
company; SUGAR FACTORY LV  
25 BLVD, LLC, a Nevada limited liability  
company; SUGAR FOX 218, LLC, a  
26 Rhode Island limited liability company;  
27

Case No.:

**PLAINTIFF'S COMPLAINT FOR:**

1. COPYRIGHT INFRINGEMENT
2. VIOLATIONS OF 17 U.S.C.  
§1202

**JURY TRIAL DEMANDED**

1 SUGAR FACTORY OCEAN DRIVE,  
2 LLC, a Florida limited liability company;  
3 TAMPA SF, LLC, a Florida limited  
4 liability company; SUGAR FACTORY I-  
5 DRIVE, LLC, a Florida limited liability  
6 company; SUGAR FACTORY  
7 ROSEMONT, LLC, an Illinois limited  
8 liability company; SUGAR FACTORY  
9 DUBAI, LLC, a United Arab Emirates  
10 registered company; SF 55, LLC, an  
11 Illinois limited liability company;  
12 TABLEZ RESTAURANT COMPANY,  
13 LLC, a United Arab Emirates registered  
14 company; THE CONFECTIONAIRES,  
15 INC., a Philippines registered company;  
16 SUGAR FACTORY CENTURY CITY,  
17 LLC, a Delaware limited liability  
18 company; MINN SF, LLC, a Minnesota  
19 limited liability company; and DOES 1-  
20 10, inclusive,

21 Defendants.

1 Plaintiff, RODNEY SMITH LTD., by and through its undersigned attorneys,  
2 hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

- 4 1. This action arises under the Copyright Act of 1976.  
5 2. This Court has jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).  
6 3. Venue is proper under 28 U.S.C. § 1391(c) and 1400(a) because a substantial  
7 part of the acts and omissions giving rise to the claims occurred here.

8 **PARTIES**

- 9 4. Plaintiff RODNEY SMITH LTD., a/k/a The Estate of Rodney Smith  
10 (collectively, “The Estate”) is a New York limited company.  
11 5. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
12 FACTORY BROADWAY, LLC, a Nevada Limited Liability Company that is a  
13 licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded  
14 facility, and does business in and with, the state of California.  
15 6. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
16 FACTORY ATLANTA, LLC a Georgia limited liability company that is a licensee  
17 of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and  
18 does business in and with, the state of California.  
19 7. Plaintiff is informed and believes and thereon alleges that Defendant BILOXI  
20 SF, LLC, a Mississippi limited liability company that is a licensee of Sugar Factory,  
21 LLC owns and/or operates a Sugar Factory branded facility, and does business in and  
22 with, the state of California.  
23 8. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
24 FACTORY BRAVERN, LLC, a Delaware limited liability company that is a licensee  
25 of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and  
26 does business in and with, the state of California.  
27  
28

1 9. Plaintiff is informed and believes and thereon alleges that Defendant TABLEZ  
2 FOOD COMPANY, LLC, a United Arab Emirates registered company that is a  
3 licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded  
4 facility, and does business in and with, the state of California.

5 10. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
6 FACTORY PFC, LLC a Virginia limited liability company that is a licensee of Sugar  
7 Factory, LLC owns and/or operates a Sugar Factory branded facility, and does  
8 business in and with, the state of California.

9 11. Plaintiff is informed and believes and thereon alleges that Defendant  
10 ATLANTIC CITY SF, LLC, a New Jersey limited liability company that is a licensee  
11 of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and  
12 does business in and with, the state of California.

13 12. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
14 FACTORY LV BLVD, LLC, a Nevada limited liability company that is a licensee of  
15 Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does  
16 business in and with, the state of California.

17 13. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
18 FOX 218, LLC, a Rhode Island limited liability company that is a licensee of Sugar  
19 Factory, LLC owns and/or operates a Sugar Factory branded facility, and does  
20 business in and with, the state of California.

21 14. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR  
22 FACTORY OCEAN DRIVE, LLC a Florida limited liability company that is a  
23 licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded  
24 facility, and does business in and with, the state of California.

25 15. Plaintiff is informed and believes and thereon alleges that Defendant TAMPA  
26 SF, LLC a Florida limited liability company that is a licensee of Sugar Factory, LLC  
27

owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

16. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR FACTORY I-DRIVE, LLC, a Florida limited liability company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

17. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR FACTORY ROSEMONT, LLC an Illinois limited liability company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

18. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR FACTORY DUBAI, LLC, a United Arab Emirates registered company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

19. Plaintiff is informed and believes and thereon alleges that Defendant SF 55, LLC an Illinois limited liability company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

20. Plaintiff is informed and believes and thereon alleges that Defendant TABLEZ RESTAURANT COMPANY, LLC, a United Arab Emirates registered company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

21. Plaintiff is informed and believes and thereon alleges that Defendant THE CONFECTIONAIRES, INC. a Philippines registered company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

22. Plaintiff is informed and believes and thereon alleges that Defendant SUGAR FACTORY CENTURY CITY, LLC a Delaware limited liability company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

23. Plaintiff is informed and believes and thereon alleges that Defendant MINN SF, LLC a Minnesota limited liability company that is a licensee of Sugar Factory, LLC owns and/or operates a Sugar Factory branded facility, and does business in and with, the state of California.

24. Defendants Does 1 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. Their true names, whether corporate, individual or otherwise, are presently unknown to Plaintiff, who therefore sues said Defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

25. Plaintiff alleges on information and belief that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and adopted, or both, each and all of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each and every violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

#### **GENERAL ALLEGATIONS**

26. The Estate manages the archive of preeminent photographer Rodney Smith.

1 27. Mr. Smith was a prominent fashion and landscape photographer known for his  
2 unique combination of surrealism, style and wit, as well as the high quality and  
3 craftsmanship of his prints.

4 28. Mr. Smith's photographic artworks have been, and continue to be, collected by  
5 museums, private collectors, and other entities around the world.

6 29. On or about February 1, 2017 all rights in and to Mr. Smith's entire catalogue  
7 of photographic works were assigned to The Estate. The assignment of photographic  
8 images and copyright interests was recorded with the U.S. Copyright Office on or  
9 about December 15, 2017 under Document 122 of Volume 9953.

10 30. The Estate exclusively owns, holds, and maintains the copyright registrations  
11 in Mr. Smith's photographs, and sells limited editions of authenticated prints, and  
12 licenses the photographs for certain commercial purposes, on a case-by-case basis.

13 31. The Estate does not allow licensees to distort its photographer's creative works  
14 by adding corporate branding on top of the Images, without additional permission  
15 and compensation.

16 32. One of the Estate's photographs, which is the subject of this lawsuit, is entitled  
17 "Mira and Wessel Holding Hands in front of the Eiffel Tower, Paris, Archive No.  
18 EBR-0907-072-03," (referred to herein as the "Subject Photograph").

19 33. The Subject Photograph was registered with the U.S. Copyright Office.

20 34. Defendants are each licensees of Sugar Factory, LLC ("Sugar Factory") a  
21 licensor of the Sugar Factory brand that provides branding, décor, and marketing to  
22 licensees to build and operate Sugar Factory branded restaurants. The Sugar Factory  
23 brand is a highly choreographed brand that uses a French décor and imagery,  
24 celebrity association, and candy themed dishes and drinks to draw in customers.  
25 Among the French themed décor is the use of the Subject Photograph with Sugar  
26 Factory brand elements added to it.

27 35. A true and correct image of the Subject Photograph is provided below:

[Intentionally Left Blank]

**Smith Photograph:**



36. The Estate is informed and believes, and thereon alleges that, Defendants and each of them have, without authorization, copied, reproduced, and publicly displayed versions of the iconic Subject Photograph. Such infringing uses include, but are not limited to, prominent displays within at least seven Sugar



1 Factory restaurant locations. A true and correct depiction of an exemplar of one  
2 infringing use in a Sugar Factory restaurant in the United States is provided below:

3  
4  
5 [Intentionally Left Blank]  
6  
7  
8

9 **Exemplar of Infringing Use:**



23  
24 37. Plaintiff is informed and believes and thereon alleges that the Subject  
25 Photograph was modified by Defendants, and each of them, to distort the Subject  
26 Photograph and by adding false certain copyright management information and  
27 Sugar Factory branding information to the Subject Photograph. As can be seen  
28

1 denoted by the red arrow in the above image, Defendants and each unlawfully added,  
2 *inter alia*, and without limitation, Sugar Factory’s branded duck icon onto the  
3 illicitly reproduced Subject Photograph.

4 38. Plaintiff is informed and believes and thereon alleges that, without  
5 Plaintiff’s authorization, Defendants, and each of them, used, exploited,  
6 displayed, and distributed images that are identical or substantially similar, to  
7 the Subject Photograph – as well as unlawful derivative versions thereof  
8 including Defendants’ copyright management information – physical locations,  
9 as well on various websites including <https://sugarfactory.com/> (such  
10 unauthorized and unlawful content collectively referred to herein as  
11 “Infringing Content”). Attached hereto as **Exhibit A** are true and correct  
12 screenshots taken from Sugar Factory’s website reflecting Infringing Content  
13 on various webpages under the “Locations” button of the website and that  
14 Infringing Content was prominently displayed in several physical locations  
15 around the world. **Exhibit A** includes red boxes identifying the Infringing  
16 Content specifically. Plaintiff has further been informed in other litigation that  
17 the Defendants, and each, engaged in the unlawful conduct alleged herein.

18 39. The exemplars set forth herein are not meant to be all-encompassing,  
19 and the claims made herein are made as to all uses and exploitations of the  
20 Subject Photograph by Defendants, and each of them, online and in their  
21 physical locations around the world.

22 40. Defendants, and each of them, have willfully copied, reproduced,  
23 displayed, and distributed Infringing Content for financial benefit and without  
24 The Estate’s consent.

25 41. Defendants, and each of them, engaged in acts of infringement,  
26 including without limitation the unauthorized reproduction and distribution of  
27 the Subject Photograph, in the United States, and these acts allowed for

Defendants, and each of them, to further infringe Plaintiff's copyrights internationally. Plaintiff makes the claims herein as to all infringing acts of Defendants, domestically and internationally.

### **FIRST CLAIM FOR RELIEF**

(For Copyright Infringement – Against all Defendants, and Each)

42. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.

43. Plaintiff alleges on information and belief that Defendants, and each of them, accessed the Subject Photograph by without limitation, viewing the Subject Photograph in periodicals, on websites or social media profiles, on other sites online, or in physical publications. The identity of the copying also establishes access.

44. Plaintiff alleges on information and belief that Defendants, and each of them, copied, reproduced, displayed, and distributed the Infringing Content at various physical locations and online on websites including but not limited to <https://sugarfactory.com/>. **Exhibit A**, attached hereto, reflects certain non-exhaustive examples of such Infringing Content.

45. Plaintiff alleges on information and belief that Defendants, and each of them, infringed Plaintiff's copyrights by creating infringing derivative works from the Subject Photograph and publishing same to the public.

46. Due to Defendants', and each of their, acts of infringement, Plaintiff has suffered general and special damages in an amount to be established at trial.

47. Due to Defendants' acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of Plaintiff's rights in the Subject Photograph. As such, Plaintiff is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the Subject Photograph in an amount to be established at trial.

48. Plaintiff alleges on information and belief that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the Copyright Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from asserting certain equitable and other defenses.

## **SECOND CLAIM FOR RELIEF**

(For Violations of the 17 U.S.C. §1202 – Against all Defendants, and Each)

1. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs.

2. The Subject Photograph included copyright management information, including without limitation the author's name, title, and/or other identifying information ("Plaintiff's CMI").

3. Principles for Defendants were aware and had knowledge at the time that the they displayed derivative versions of the Subject Photograph bearing Defendant's false CMI that they did not have permission to use Plaintiff's Subject Photograph and that the CMI added to the Subject Photograph was likely to induce, enable, facilitate, or conceal infringement.

4. Defendants, and each of them, distributed and displayed unauthorized copies of the Subject Photograph with knowledge that Plaintiff's CMI had been removed therefrom and/or altered.

5. Plaintiff alleges on information and belief that Defendants, and each of them, added false copyright management information to the Subject Photograph, before distributing, displaying, and publishing same, as described and depicted hereinabove.

6. Plaintiff alleges on information and belief that Defendants, and each of them, distributed and published the Subject Photograph at and on websites and in its physical locations under its own name and including its own branded content and/or identifiers.

7. On information and belief it is alleged that Defendants added “copyright management information,” as that phrase is defined in 17 U.S.C. § 1202(c), to the Subject Photograph that was false.

8. When Defendants distributed and published the Subject Photograph, they knowingly provided and/or distributed false copyright management information in violation of 17 U.S.C. § 1202(a). As a result of the foregoing, Plaintiff has been damaged and may recover those damages as well as Defendants' profits, and/or statutory damages, and attorneys' fees under 17 U.S.C. § 1203.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment as follows:

**Against all Defendants, and Each, with Respect to Each Claim for Relief:**

a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing Plaintiff's copyrights in the Subject Photography, including without limitation an order requiring Defendants, and each of them, to remove any content incorporating, in whole or in part, the Subject Photography from any print, web, or other publication owned, operated, or controlled by any Defendant.

b. That Plaintiff be awarded all profits of Defendants, and each of them, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available, statutory damages as available under 17 U.S.C. § 504 , 505 and other applicable law.

1 c. That a constructive trust be entered over any revenues or other proceeds  
2 realized by Defendants, and each of them, through their infringement of Plaintiff's  
3 intellectual property rights;

4 d. That all infringing physical and digital copies of the Subject Photograph in  
5 Defendants' possession, custody, or control be impounded, held in trust, and/or  
6 conveyed to Plaintiff.

7 e. That Plaintiff be awarded his attorneys' fees as available under the  
8 Copyright Act U.S.C. § 505;

9 f. That Plaintiff be awarded his costs and fees;

10 g. That Plaintiff be awarded statutory and enhanced damages;

11 h. That Plaintiff be awarded pre-judgment interest as allowed by law; and

12 i. That Plaintiff be awarded further legal and equitable relief as deemed proper.

13 **Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R.**  
14 **Civ. P. 38 and the 7<sup>th</sup> Amendment to the United States Constitution.**

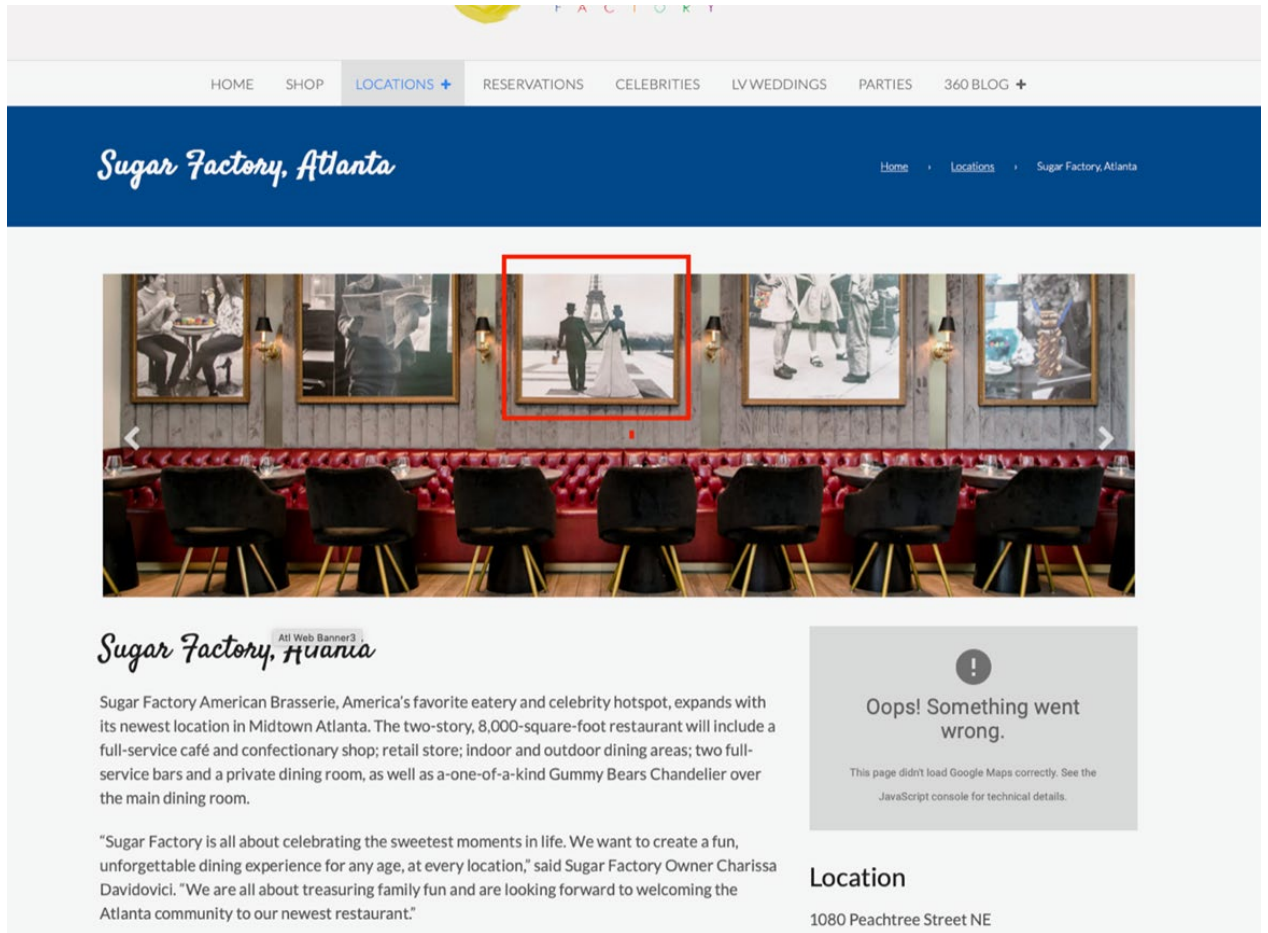
15  
16 Respectfully submitted,

17 Dated: December 2, 2022

18 By: /s/ Trevor W. Barrett  
19 Scott Alan Burroughs, Esq.  
20 Trevor W. Barrett, Esq.  
21 Frank R. Trechsel, Esq.  
22 DONIGER / BURROUGHS  
23 For the Plaintiff  
24  
25  
26  
27  
28

## EXHIBIT A

### Atlanta, Georgia:



HOME SHOP LOCATIONS + RESERVATIONS CELEBRITIES LV WEDDINGS PARTIES 360 BLOG +

*Sugar Factory, Atlanta* Home Locations Sugar Factory, Atlanta

*Sugar Factory, Atlanta* All Web Banner3

Sugar Factory American Brasserie, America's favorite eatery and celebrity hotspot, expands with its newest location in Midtown Atlanta. The two-story, 8,000-square-foot restaurant will include a full-service café and confectionary shop; retail store; indoor and outdoor dining areas; two full-service bars and a private dining room, as well as a one-of-a-kind Gummy Bears Chandelier over the main dining room.

"Sugar Factory is all about celebrating the sweetest moments in life. We want to create a fun, unforgettable dining experience for any age, at every location," said Sugar Factory Owner Charissa Davidovici. "We are all about treasuring family fun and are looking forward to welcoming the Atlanta community to our newest restaurant."

**Location**

1080 Peachtree Street NE

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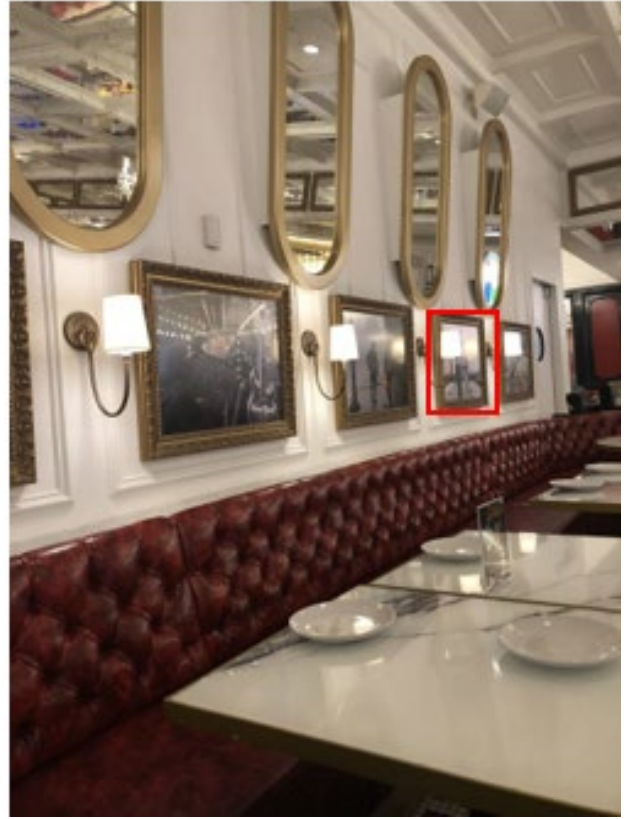


**Bellevue, Washington:**






**Biloxi, Mississippi:**



Dubai, United Arab Emirates:

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*Dubai Festival City* [Home](#) [Locations](#) [Dubai Festival City](#)



*Dubai Festival City*

With locations in some of the world's most cosmopolitan cities, including Las Vegas, New York City, Bahrain, Chicago, Miami and Orlando, Sugar Factory is known the world over for its celebrity-


!

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**Foxwoods Casino, Connecticut:**

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*Foxwoods*

The Sugar Factory legend grows with the opening of our newest candy and dining emporium at Foxwoods Resort & Casino in Mashantucket, Connecticut. Our signature lineup of delicious desserts, outrageous cocktails and scrumptious entrees are inviting you to join us!

About Sugar Factory

With locations in some of the world's most glamorous cities, including Las Vegas, New York City,

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Pentagon City Mall, Virginia:

HOME

SHOP

LOCATIONS +

RESERVATIONS

CELEBRITIES


LV WEDDINGS

PARTIES

360 BLOG +

Sugar Factory Pentagon City Mall

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### Sugar Factory Pentagon City Mall

"Sugar Factory has landed at the Pentagon!" Pentagon City Mall that is. We're Now Open!

The Fashion Centre at Pentagon City, also known as Pentagon City Mall, is an upscale shopping

!

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